



The background of the page features a collage of images. At the top left is the 'BROOKINGS' logo. Below it is a photograph of a panel of judges sitting at a long table in a courtroom. To the right of this is a bar chart with three bars of increasing height, labeled with percentages: 16.1%, 39.2%, and 25.1%. Below the bar chart is a photograph of a woman speaking at a podium. At the bottom left is a photograph of a man in a suit speaking. The title 'Judges and Judgeships' is written vertically in large, bold, black letters across the center of the page, overlapping the bar chart and the bottom photograph.

BROOKINGS

Judicial Nominations and Confirmations

During the second session of the 107th Congress, 52 nominees for Article III judgeships were confirmed—eight court of appeals judges and 44 district court judges. At the close of the 107th Congress, there were 77 judicial vacancies—27 in the U.S. courts of appeals, 49 in the U.S. district courts, and one in the Court of International Trade. Judicial vacancies continue to be a serious concern.

Judges' Pay

In fiscal year 2002, federal judges, along with members of Congress and Executive Schedule employees, received a 3.4 percent Employment Cost Index (ECI) adjustment, effective January 1, 2002. The Judicial Conference Committee on the Judicial Branch, three judges' associations, members of Congress, Director Mecham, and Administrative Office staff worked diligently to secure this needed salary adjustment.

As of 2002, judges had received cost-of-living increases in four of the past five years, but these increases still have not made up for previously denied pay adjustments. The overall compensation of federal judges continues to lag behind recent significant growth in salaries and benefits received by comparable legal positions in the public and private sector.

Judges were still waiting for final resolution of their 2003 ECI adjustment when the 107th Congress adjourned, despite appeals by judges to their representatives and the efforts of bar associations, judicial organizations, Director Mecham, and Administrative Office staff. The President decided to allow a 3.1 percent increase for General Schedule employees to go into effect in 2003 (exclusive of locality-based increases, which he subsequently denied). This decision meant that

senior executive branch officials and members of Congress would receive a 3.1 percent total increase effective January 2003.

Legislation authorizing the judges' 2003 ECI adjustment was passed early in the 108th Congress. The ECI adjustment will be effective as of January 1, 2003.

Volcker Commission Warns About Inadequate Pay for Judges

The second National Commission on the Public Service, also known as the Volcker Commission, was convened in 2002 to look at the need for comprehensive reform in the federal public service. Two public hearings were held by the Commission in July, at which Chief Justice William H. Rehnquist, Associate Justice Stephen Breyer, and Chief Judge Deanell Tacha (10th Cir.), chair of the Conference Committee on the Judicial Branch, testified on the inadequacy of judicial pay. Writing in his capacity as Secretary to the Judicial Conference, Director Mecham responded to the Commission's request for comments and described the impact of pay erosion, and pay compression on federal judges and court employees and their need for pay comparability.

Director Mecham and Administrative Office staff also provided research and other information to the Judiciary's witnesses and the Commission.

In January 2003, the Commission made positive recommendations in its report, "Urgent Business for America: Revitalizing the Federal Government for the 21st Century," on the need for an increase in judicial salaries. The Administrative Office will work closely with Judiciary leaders and others in seeking implementation of those aspects of the report relating to judicial compensation.

Interim Steps Toward Implementation Include Judicial Pay Increase

Recognizing that its many recommendations for a broad reorganization of government cannot all be implemented at one time, the Volcker Commission cited several interim steps that can and should be taken promptly. Among these steps was:

“Congress should grant an immediate and significant increase in judicial, executive, and legislative salaries to ensure a reasonable relationship with other professional opportunities. Its first priority in doing so should be an immediate and substantial increase in judicial salaries.”

New Article III Judgeships

On November 2, 2002, President Bush signed into law, P.L. 107-273, the 21st Century Department of Justice Appropriations Authorization Act, which, in addition to many other provisions, established new federal district judgeships. Through the leadership of Senator Patrick Leahy (D-VT) and Representative F. James Sensenbrenner (R-WI), chairs of the respective Senate and House Judiciary committees, the new law provides a significant breakthrough in addressing the need for new district court judges. The measure, however, did not contain all the positions endorsed by the Judicial Conference or more judgeships for the U.S. courts of appeals. The last court of appeals judgeships were created in 1990.

No bill incorporating the Judicial Conference recommendations for 54 judgeships was introduced in Congress in 2002. Director Mechem had re-transmitted to Congress the Conference request for the creation of additional judgeships, originally sent February 5, 2001. The proposed legislation would have added six permanent judgeships and four temporary judgeships to the courts of appeals, 23 permanent judgeships and 21 temporary judgeships to the district courts, converted seven existing temporary

judgeships to permanent positions, and extended one existing temporary judgeship. The request also would have conferred Article III status on the judgeships authorized for the Commonwealth of the Northern Mariana Islands and the U.S. Virgin Islands. At the request of the House Judiciary Subcommittee on the Constitution, Judge Dennis Jacobs (2nd Cir.), chair of the Judicial Conference Committee

on Judicial Resources, submitted a statement detailing the Judiciary’s judgeship needs. In his statement, Judge Jacobs also described the process by which judgeship needs are determined by the Judicial Conference—a process that includes a biennial survey. Staff from the Administrative Office provided assistance to the Judicial Resources Committee’s Subcommittee on Judicial Statistics in preparing for and conducting the 2003 Biennial Judgeship survey, which takes into account changes in workload and the availability of resources, and features several levels of review within the Judiciary before recommendations for new judgeships are made to the Judicial Conference.

Other bills, creating judgeships for specific regions or districts of the country, such as H.R. 272, the Southwest Border Judgeship Act of 2001, and an identical Senate bill, S. 147, did not pass Congress in this session.

P.L. 107-273

Creates judgeships in the following districts:

Southern District of California: 5 Permanent

Western District of North Carolina: 1 Permanent

Western District of Texas: 2 Permanent

Adds one temporary judgeship to each of the following districts:

Northern District of Alabama

District of Arizona

Central District of California

Southern District of Florida

District of New Mexico

Western District of North Carolina

Eastern District of Texas

Converts existing temporary judgeships to permanent in:

Central and Southern Districts of Illinois

Northern District of New York

Eastern District of Virginia

Extends for five years the temporary district court judgeship for the Northern District of Ohio.

Magistrate Judge Positions

In fiscal year 2002, there were 470 full-time, 59 part-time, and three combination clerk/magistrate judge positions. Another seven new full-time magistrate judge positions were authorized for fiscal year 2003. Four of the seven new positions were conversions of part-time positions to full-time status. The increases are due to growing caseloads and expanded use of magistrate judges by the district courts.

Intercircuit Assignments

In support of the Judicial Conference Committee on Intercircuit Assignments, Administrative Office staff help process assignments for Article III judges to serve outside their home circuits or, in the case of the judges of the Court of International Trade, to serve on other Article III courts. During the first six months of 2002, 108 intercircuit assignments of 75 Article III judges were processed by the Committee and approved by the Chief Justice. Of the 108 assignments, 73 were to serve on the courts of appeals and 35 in district courts. A new automated system was implemented in summer 2002 to facilitate the administrative process for designating Article III judges outside their home circuits.

Agency staff continued to help maintain rosters of active and senior judges who are willing to take intercircuit assignments, and identify and obtain judges to help courts in need. In July 2002, the Committee on Intercircuit Assignments requested that each Article III judge complete an on-line questionnaire regarding willingness to take intercircuit assignments. Staff received more than 300 responses.

Inter- and Intra-circuit Assignments and Service by Recalled Bankruptcy Judges

The Administrative Office monitors assignments of bankruptcy judges working outside their home districts. In fiscal year 2002, bankruptcy judges provided almost 10,000 case-related hours of assistance to help the Judiciary manage a record-breaking caseload.

Intracircuit assignments accounted for 7,316 hours of trial and other case-related work. Intracircuit assignments also help single-judge districts when a conflict of interest arises for the resident judge. Intercircuit assignments, which

require the approval of the chief circuit judges of both the borrowing and the lending circuits, accounted for 2,665 hours. Many of these assignments were fulfilled by retired bankruptcy judges who continue to serve in a recalled capacity. The bankruptcy court system benefited from the assistance of 31 recalled judges in 2002. Administrative Office staff also helped obtain judges to help courts in need.

Data on Hearings May Influence Weighted Caseload

In 2001, the Administrative Office began collecting new data on hearings conducted on violations of conditions of supervised release. The data are derived from docket entries in the courts' case management system, which are submitted through an automated report for inclusion in a national database. Once agency staff have identified and resolved problems related to the reporting of the data, information on supervised release violation hearings taken from the docketing system will become an additional factor in the weighted caseload formulas that the Judiciary uses to evaluate the need for new judge-ships.

Programs Familiarize Judges with Management, Retirement and Benefits

Orientation programs for new chief judges and judicial nominees are a key element of the Administrative Office's outreach efforts. In 2002, staff briefed 65 judicial nominees. In 2002, the one-day orientation was enhanced to include sessions on management and stewardship issues for judges. Staff also presented 11 orientation programs for 13 chief judges. The two-day programs focus on the responsibilities of chief judges and the assistance provided by the Administrative Office.

Retirement and benefits programs for judges were in demand in 2002. The AO hosted two retirement-planning programs for bankruptcy judges and two for magistrate judges in conjunction with Federal Judicial Center educational programs. In addition, retirement and benefits outreach programs were conducted upon request at three district court locations for Article III, bankruptcy, and magistrate judges, and for one circuit judicial conference. Nine retirement and benefits overview programs were presented as part of the Federal Judicial Center's live and video orientation programs for new district, bankruptcy and magistrate judges.

Federal Rules of Practice and Procedure

The Judicial Conference Committee on Rules of Practice and Procedure and its five advisory committees propose amendments to the rules that govern all federal court proceedings and affect the entire legal system. In 2002, the rules committees continued to reach out and involve members of the Judiciary, bar, academia, and the public in the federal rulemaking process.

Administrative Office staff assisted the rules committees in monitoring congressional activity in the rule-making process. Staff advised the committees of some 20 separate pieces of legislation that were introduced in, or passed by, the Congress during the past year that could affect the rules of practice and procedure. Staff also prepared position papers and correspondence to Congress expressing the views of the Judiciary relating to rules-related issues in legislation.

Proposed amendments to the federal rules of practice and procedure have been placed on the Judiciary's Federal Rulemaking Internet web site, where comments

and questions can now be submitted electronically. In addition, pamphlets and brochures summarizing the proposed rules amendments are prepared and distributed to the public. Agency staff worked to make the rules web site easier for users to find, research, and track proposed rules amendments as they proceed through the rulemaking process. They also are updating and expanding the amount of rules-related content on the web site.

Rule Amendments Become Effective; Others Proposed

The 107th Congress adjourned without taking any action on the amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure approved by the Supreme Court on April 29, 2002. The amendments, therefore, became effective December 1, 2002. Particularly noteworthy is the comprehensive "style" revision of the Federal Rules of Criminal Procedure to simplify, clarify, update, and make more uniform the federal procedural rules. (Restyling of the Federal Rules of Appellate Procedure took effect on December 1, 1998.) The Criminal Rules were also amended to authorize a court, with the consent of the defendant, to conduct an initial appearance or arraignment by videoconferencing.

The Judicial Conference approved proposed amendments to the Federal Rules of Appellate, Bankruptcy, and Civil Procedure, and the Federal Rules of Evidence at its September 2002 session. The proposed amendments to the Bankruptcy rules implement Conference policy on protecting the privacy of debtors. Extensive revisions also were approved to Civil Rules 23 (class actions), 51 (jury instructions), and 53 (masters). The proposed amendments have been submitted to the Supreme Court for its approval.

No New Bankruptcy Judgeships

Bankruptcy reform legislation considered in the 107th Congress would have created 28 additional temporary bankruptcy judgeships and extended the terms of four existing temporary bankruptcy judgeships. However, the legislation failed to pass in this Congress. While the caseload of bankruptcy judges has increased 59 percent in the last decade, no new bankruptcy judgeships have been created since 1992.



While in Washington, DC, a judicial delegation from the People's Republic of China visited the Administrative Office, the Supreme Court, the Federal Judicial Center, the Court of Federal Claims, and the U.S. Tax Court. The delegation, led by President Judge Xi Xiaoming of China's Supreme People's Court, came to learn about the various specialized courts and about methods of dispute resolution. The visit was organized through the National Committee on US-China Relations.

International Judicial Relations

The Judicial Conference Committee on International Judicial Relations and Administrative Office staff continued to receive numerous inquiries and requests for help from the judiciaries of other countries, international organizations, and U.S. government agencies involved in judicial reform and rule of law activities. In 2002, Administrative Office staff held briefings for 72 international delegations, including almost 700 trial and appellate judges, court administrators, and other court staff. They coordinated the Judiciary's involvement in the rule-of-law component of the Open World Program at the Library of Congress, through which 133 Russian judges participated in two-day orientations in Washington, D.C., and were then hosted for a week in one of 29 different courts and communities. With the U.S. Department of Commerce, U.S. Patent and Trademark Office, and Federal Judicial Center, Administrative Office staff conducted a week-long conference on intellectual property and the Judiciary for 35 judges from eight countries. Staff also took part in a conference of North and South

American public defense counsel offices in Santiago, Chile, a workshop on court administration for 25 judges and court administrators in Rostov, Russian Federation, and a conference in Kibuye, Rwanda, that produced recommendations concerning areas critical to judicial reform for consideration by the Rwanda Law Reform and Law Revision Commission and the Rwanda Constitution Reform Committee. Throughout the year, staff worked with U.S. law schools on various judicial observation programs, including identifying federal judges to host Korean judges attending one of 13 law schools as visiting scholars. They briefed judges from such countries as Russia, New Zealand, Thailand, China, Morocco, and Armenia on bankruptcy court operations, and provided written materials for judges in Singapore, Vietnam, and Canada.